SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

April 20, 2010

Robert W. Hassett, III
SBI# 0
S.C.I.
P.O. Box 500
Georgetown, DE 19947

RE: *State of Delaware v. Robert W. Hassett, III*, Def. ID# 0005011315 (R-2)

DATE SUBMITTED: March 25, 2010

Dear Mr. Hassett:

Pending before the Court is the second motion for postconviction relief which defendant Robert W. Hassett, III ("defendant") has filed in this matter pursuant to Superior Court Criminal Rule 61 ("Rule 61"). This motion is procedurally barred and defendant has failed to establish that any exceptions to the procedural bars apply. Because I summarily deny the motion, I also deny the accompanying motions seeking the appointment of counsel, to expand the record, and to issue subpoenas. These rulings render defendant's motion to proceed *in forma pauperis*[1] moot.

[1]I assume defendant filed this motion to obtain a ruling that he would not have to pay the costs of any subpoenas which he sought to have issued.

Set forth below are the pertinent facts as well as summaries of previously-made rulings.[2]

On May 14, 2000, defendant stabbed his stepmother, Sherri L. Hassett ("Sherri"), to death outside his apartment.

Thomas D.H. Barnett, Esquire was defendant's trial attorney. Mr. Barnett was aware that defendant had suffered from mental issues in the past and he took steps to have defendant examined to determine if there was a basis for any diminished capacity defense. However, defendant adamantly refused to admit he killed Sherri. Because such an admission was necessary for a diminished capacity defense, trial counsel abandoned an investigation into whether defendant was mentally ill at the time of the offense.

Defendant's defense was that his friend, Jason Coggin ("Coggin"), was the murderer. Coggin testified that he was inside defendant's apartment when the stabbing occurred and did not participate in the murder. The jury rejected defendant's defense and accepted the State's evidence which established defendant to be the murderer. Consequently, the jury convicted defendant of the charges of murder in the first degree and possession of a deadly weapon during the commission of a felony.

The Supreme Court affirmed the judgment of the Superior Court. *Hassett v. State*, 797 A.2d 1206, 2002 WL 1009861 (Del. May 15, 2002). The date of the mandate for this decision

---

[2]A detailed factual and procedural history may be obtained by reviewing the following decisions: *State v. Hassett*, 2003 WL 21999594 (Del. Super. Ct. Aug. 25, 2003) (initial decision on defendant's first Rule 61 motion); *State v. Hassett*, 2004 WL 2419139 (Del. Super. Ct. Oct. 14, 2004) (modified decision on first Rule 61 motion after Supreme Court remanded for further consideration of the ineffective assistance of counsel claims); *Hassett v. State*, 877 A.2d 52, 2005 WL 1653632 (Del. June 24, 2005) (TABLE) (Supreme Court's affirmance of Superior Court's decision on first Rule 61 motion); and *Hassett v. Kearney*, 2006 WL 2682823 (D. Del. Sept. 18, 2006) (decision of United States District Court in and for the District of Delaware on *habeas corpus* petition raising same issues raised in the first Rule 61 motion).

was June 3, 2002.

Defendant thereafter filed a motion for postconviction relief and a motion for new trial based on Coggin's alleged recantation. The Court denied defendant's motions. *State v. Hassett*, 2003 WL 21999594 (Del. Super. Ct. Aug. 25, 2003). The Supreme Court remanded the matter for further consideration of the ineffective assistance of counsel claims. *State v. Hassett*, Del. Supr., No. 468, 2003, Holland, J. (May 20, 2004). This Court held a hearing. A portion of the hearing addressed defendant's competency from December 2000 through his trial in June 2001.

During this time period from December 2000 through June 2001, defendant was off his mental illness medications. This Court addressed defendant's mental health issues and competency issues in *State v. Hassett*, 2004 WL 2419139, **2-3 (Del. Super. Ct. Oct. 14, 2004):

> At the Rule 61 hearing, Mr. Barnett testified as did Allen Weiss, M.D. Also, defendant's medical records from the time of his incarceration until the present were submitted.
>
> When defendant was incarcerated on May 14, 2000, he was experiencing symptoms of mental illnesses. Dr. Weiss, a psychiatrist who worked at Sussex Correctional Institute, evaluated him on May 16, 2000, and diagnosed him with schizoaffective disorder, polysubstance abuse disorder, alcohol dependence, antisocial personality disorder, and post-traumatic stress disorder. Dr. Weiss prescribed medications. Defendant's symptoms of mental illness began subsiding. In December, 2000, defendant told the doctor he no longer wanted to be on the medications and they were causing him to gain weight. Dr. Weiss, concluding that defendant was stable and did not appear to be a threat of danger to himself or others, allowed defendant to go off the medications based on his refusal to continue to take them. Defendant continued to be evaluated by the mental health professionals at the prison for the purpose of determining whether he continued to remain mentally stable. Dr. Weiss stopped working at the prison in February, 2001. However, defendant's medical records make clear that defendant did not exhibit any symptoms of active mental illnesses from December, 2000 through the trial. Defendant's illnesses are cyclical, and he was stable from the time he was off his medicines through his trial.
>
> Dr. Weiss opined that based on his observations of defendant and the medical records, defendant, during the time in question, had sufficient present ability to consult with a lawyer rationally, had a rational and factual understanding of the

> proceedings against him, and was able to assist in preparing his defense.
>
> Mr. Barnett testified to the following. *** Mr. Barnett never witnessed any behavior of defendant that was anything but normal before and during the trial; i.e., defendant never exhibited any bizarre behavior which would have indicated that he might be suffering from any active mental illness. Defendant was able to review evidence with Mr. Barnett, defendant directed his own defense, defendant sent letters to the Court during this time frame which were coherent and oriented as to time and place, defendant was attentive during this trial and defendant knew what was occurring. Defendant was quite capable of participating in his defense. He was perfectly rational. There was no reason for Mr. Barnett to question defendant's competency and have him evaluated.
>
> This Court observed defendant during trial and during his testimony at that trial. There never was any behavior to cause the Court to question defendant's competency. He was attentive during trial. He responded to the questions asked. He was oriented as to time and place.

This Court made the following pertinent findings in *State v. Hassett*, *supra,* * 3.There was nothing to indicate to trial counsel that defendant was suffering any active symptoms of mental illnesses from December 2000 through his trial in 2001. *Id.* There was no basis for trial counsel to have defendant undergo a mental evaluation to determine his competency and there was nothing to indicate that defendant was anything but competent during this time period. *Id.* The Court further ruled: "Mr. Barnett was fully justified in concluding that defendant was competent to participate in his defense. Mr. Barnett was not ineffective for failing to have defendant evaluated for competency." *Id.* Furthermore, this Court found defendant was competent from December 2000 through trial; i.e., defendant was mentally competent to made decisions about his defense. *Id.*

The findings in the Court's October 14, 2004, decision pertinent to the currently pending Rule 61 motion are that defendant was competent to make decisions; defendant did make such decisions regarding his defense; the pertinent decision he made was that he would not admit to killing his stepmother; and that decision precluded his attorney from pursuing a diminished

capacity or a mental illness defense, a pursuit his attorney was undertaking before defendant made the decision to not admit to killing his stepmother.

The Supreme Court affirmed the Superior Court's decision on the first Rule 61 motion. *Hassett v. State*, 877 A.2d 52, 2005 WL 1653632, ** 3-4 (Del. June 24, 2005) (TABLE). The United States District Court in and for the District of Delaware concluded this Court did not unreasonably apply *Strickland* in concluding trial counsel was not ineffective by not pursuing defendant's mental health issues. *Hassett v. Kearney*, 2006 WL 2682823, **6-7 (D. Del. Sept. 18, 2006).

Defendant filed his pending Rule 61 motion on March 25, 2010. In that motion, defendant seeks to overcome the procedural bars by arguing that newly discovered evidence renders his motion to be in the interest of justice and that a review of his motion shows there was a miscarriage of justice in his trial. Defendant argues that the Court lacked authority to convict him because of his mental illness; trial counsel created a miscarriage of justice when he failed to investigate the extent of his mental illnesses; and the trial would have been different if the jury had been presented with this evidence of his mental illnesses.

Defendant develops his motion as follows.

Defendant maintains that he was not actually treated for his mental illnesses until March 2009. According to him, Dr. Ohl Falola, Dr. Ala Taha, and Therapist Christina B. Kane have determined he cannot make reasonable decisions if he is off his medication for long periods of time. He would like to have an attorney appointed to represent him so that the attorney could undertake discovery and gather this information from the doctors. He claims the doctor-patient privilege prevents him (defendant) from obtaining these doctors' opinions that he cannot make

reasonable decisions if he is off his medicine for long periods of time.

Defendant argues that if the information was produced, then it would show he was mentally ill at the time of the crimes and up through his trial. He argues that the new evidence would show that he could not make a reasonable decision regarding his defense and trial counsel created a miscarriage of justice by refusing to pursue a mental illness defense. He then goes on to argue that had a mental illness defense been established, he could have been found less culpable. Although in the pending motion defendant never states he did kill Sherri, he implies that he did, arguing the jury "would have learned that the defendant had committed the crime under mental distress and Extreme Emotional distress. Creating [sic] a laspe [sic] in the defendants [sic] ability to differentiate between what was reality and one of his hallucinations."

Defendant argues:

> The court can not rely on the ground that defendant would not admit guilt. As defendant suffers a mental illness of which he is prone to visual and auditory hallucinations. Which means that he at times may assert himself in a way in which he believes to be complete truth. But is in reality only one of his hallucinations. This can be seen in further depth by defendants [sic] new evidence.[3]

Defendant argues that his relationship with his attorney broke down. He invokes the decision of *Cooke v. State*, 977 A.2d 803 (Del. 2009), *cert. den.*, – S.Ct.–, 2010 WL 596882 (Feb. 22, 2010) ("*Cooke*"), to support his motion. In *Cooke*, the Supreme Court found that defense

---

[3]Interestingly, in his *habeas corpus* filings with the United States District Court in and for the District of Delaware, defendant argued "that he actually did admit his guilt at trial; he states that, when he referred to 'Jason' at trial, he was referring to 'one of the auditory hallucination personalities that [he] suffers from,' and not to his friend Jason Coggin." *Hassett v. Kearney*, 2006 WL 2682823, *7 n. 1 (D. Del. Sept. 18, 2006). That Court ruled "that Petitioner's vague, self-serving, and unsupported contention that the 'Jason' he referred to at trial was one of his alternate 'auditory hallucination personalities' does not rebut the presumption of correctness applied to the Superior Court's specific factual finding that Petitioner was not suffering from any active mental illness symptoms during his trial." *Id.*

counsel's proceeding with the strategy to seek a verdict of guilty but mentally ill over defendant's objection and claim that he was innocent and not mentally ill violated his fundamental right to plead not guilty. Defendant argues:

> As with Cooke, Supra.[sic] the defendant was deprived of his sixth amendment right to make fundamental decisions concerning his case. As the defendant was and is mental [sic] ill, and at the times before and of trial the defendant was not receiving any treatment for his mental disorders. Leaving him unable to make those fundamental decisions so vital concerning his case and the rest of this life or to uphold the integrity of the sixth amendment. It was the duty of the court in seeing a repeated pattern of trial error to protect the defendants [sic] sixth amendment rights.

He says his case is like *Cooke*, "but in reverse": defendant was mentally ill and counsel knew that but counsel pursued a not guilty verdict. That "strategy deprived the defendant his constitutional right to make a fundamental decision in his case. As the defendant was not receiving mental health treatment which would allow him to function and make sound trial strategy's [sic]."

Before considering the matter on the merits, I examine whether procedural bars apply.[4]

---

[4]The version of Rule 61(i), applicable to defendant's case read as follows:

> *Bars to relief.* (1) Time limitation. A motion for postconviction relief may not be filed more than three years after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.
> (2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim in warranted in the interest of justice.
> (3) Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows
> (A) Cause for relief from the procedural default and
> (B) Prejudice from violation of the movant's rights.

The motion is time-barred as the matter became final on June 3, 2002, and this motion was filed nearly eight years later. Rule 61(i)(1). The motion, which raises competency issues, also is barred because that issue previously was adjudicated. Rule 61(i)(4). Defendant seeks to overcome the procedural bars by invoking exceptions based on his contention he has new evidence which will show he was mentally ill during the pretrial period and trial itself.

First, defendant has not produced any "new" evidence of anything. He desires to have an attorney appointed to represent him who will be instructed to ferret out the opinions of medical professionals that he could not make reasonable decisions if he is off his medicine for a long period of time.

Defendant apparently does not recall the competency versus mentally ill issue set forth in my decision in *State v. Hassett*, 2004 WL 2419139, *3 (Del. Super. Ct. Oct. 14, 2004). Therein, I stated:

> Defendant seems to think that just because he had suffered a mental illness, been treated for it, and was no longer treating, that in itself shows he was not competent. The fact a person is mentally ill is not what determines competency. Competency is determined by whether the defendant is able to consult with his lawyer rationally, whether the defendant has a rational as well as a factual understanding of the proceedings against him, and whether the defendant is able to assist in preparing his defense. *State v. Shields*, 593 A.2d 986, 1004 (Del. 1990).

> (4) Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.
>
> (5) Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

This Court ruled defendant was competent during the pertinent time period. That issue is resolved forever. No medical professional can, at this point in time, overcome the factual finding that defendant was competent during the time period in question. Thus, defendant has not produced, nor can he produce, any "new evidence" of anything regarding his competency during the pertinent time period.

Defendant's competency allowed him to make decisions on his defense. He made the call to refuse to admit guilt. That precluded his attorney from pursuing mental illness defenses.

Defendant's other argument is that *Cooke*, "in reverse," somehow provides him with a basis for overcoming the procedural bars. There is no legal or rational basis for applying *Cooke* "in reverse" to grant defendant relief.

For the foregoing reasons, I deny defendant's second motion for postconviction relief. Because I summarily deny defendant's motion, no need exists to appoint an attorney to represent him, to allow discovery, to issue subpoenas or to have a hearing. In conclusion, I deny all of defendant's pending motions.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Attorney General's Office
Office of the Public Defender